THE HON'BLE SRI JUSTICE C.V. RAMULU

Monday, 16th day of April,2007

W.P.No.26449 of 1997

Between:-

P.V. Chalapathi … Petitioner

and

APSEB, rep. by its Member Secretary, Vidyut Soudha, Hyderabad and another …
Respondents … Respondents

THE HON'BLE SRI JUSTICE C.V. RAMULU

W.P.No.26449 of 1997

ORAL ORDER:

This Writ Petition is filed seeking a Mandamus declaring the action of the respondents in purporting to revert the petitioner from the post of UDC to the post of LDC following B.P. (P&G-PER) Ms.No.217, dated 18-1-1997 as arbitrary and illegal and consequently to direct the respondents to continue the petitioner as Upper Division Clerk with all consequential benefits.

It appears, petitioner joined the service of the 1st respondent-Board as Bill Collector and subsequently redesignated as Revenue Cashier. The category of revenue cashier was merged with Lower Division Clerk vide B.P.Ms.Nos.98 and 99, dated 29-1-1988 and then an integrated seniority list was prepared with effect from 1-5-1982. Thus, the petitioner joined the pool of L.D.Cs. inasmuch as the category of Revenue Cashier stood automatically abolished. Petitioner has put in 30 years of service. As per the amendment of A.P.S.E.B. Service Regulations Part III, vide B.P.Ms.No.99, dated 29-1-1988, the integrated revenue cashiers shall be entitled to promotion to the category of Upper Division Clerk in every 10th vacancy. In other words, 10% of the vacancies in UDC category were reserved for the revenue cashiers, who were integrated with LDCs. According to the petitioner, as he was a revenue cashier, he is entitled to the benefit of 10% vacancy reservation for promotion to the category of UDC.

Therefore, the 1st respondent issued B.P.Ms.No.414, dated 3-5-1989 to the same effect. Respondent No.2 had issued Orders dated 24-7-1996 promoting the petitioner as UDC and since then he has been working as UDC without any complaint. While that being so, the 2nd respondent has issued the notice dated 17-9-1997 to the effect that consequent on the Judgment of the Supreme Court and issuance of B.P.Ms.No.217, dated 18-1-1997 the petitioner will be reverted to a lower post as B.P.Ms.No.414, dated 3-5-1989 was cancelled by the 1st respondent. According to the petitioner, the Judgment of the Supreme Court was not relating to B.P.Ms.No.414, dated 3-5-1989 and it was relating to B.P.Ms.No.664, dated 5-8-1981. However, the 1st respondent issued B.P.Ms.No.217, dated 18-1-1997 purporting to implement the spirit of the Judgment of the Supreme Court and thereby cancelled B.P.Ms.No.664, dated 5-8-1981, B.P.Ms.No.442, dated 27-5-1985, B.P.Ms.No.326, dated 13-9-1993 and Para 7(13) of B.P.Ms.No.414, dated 3-5-1989. Till it is cancelled, B.P.Ms.No.414, dated 3-5-1989 was valid and the Supreme Court has never dealt with the issue contained in B.P.Ms.No.414, dated 3-5-1989. Therefore, the notice dated 17-9-1997 issued by the 2nd respondent is arbitrary and illegal.

A detailed counter affidavit has been filed by the respondents denying the allegations made by the petitioner. It is asserted in the counter as under:

> "4. With reference to para 6, it is submitted that the contention of the petitioner that the judgment of the Supreme Court was not relating to B.P.Ms.No.414, dated 3-5-1989 is not correct for the reasons noted hereunder:
>
> (1) The B.P.Ms.No.664, dated 5-8-1981 issued by the A.P.S.E. Board was quashed by the Hon'ble High Court of A.P. Division Bench on 7.10.83 in W.A.Nos.675, 679/81

and W.P.No.8432/82. The Operation of the above Judgment was ordered to be stayed by the Hon'ble Supreme Court of India on 13.1.84 in C.M.P.Nos.37166/83 and 1433/84 in the matter of C.A.Nos.180-181/84.

(2) The Hon'ble Supreme Court of India passed interim orders that such of the petitioners as are entitled to be promoted will be promoted notwithstanding any agreement that the Board might have entered with the Unions subsequent to the passing of their earlier orders. It was further ordered therein that such of the respondents, who are entitled to be promoted pursuant to their earlier order will also be promoted.

(3) All the orders of the Board with regard to effecting promotions to its personnel were issued specifically mentioned the clause that their promotion shall be subject to result of the cases pending in Supreme Court.

(4) In para 7(15) of B.P.Ms.No.414, dated 3-5-1989 it was specifically informed that "any promotions issued to the Revenue Cashiers based on this orders is subject to the final decisions to be taken on the C.As and Writ Petitions already pending before the Supreme Court and High Court of A.P.

(5) While promoting the petitioner as U.D.Clerk, vide this Office Memo No.PO.ADM.UI/F.5/D.No.496, dt.8.7.96 it was specifically mentioned that the promotion ordered is subject to review and revision depending on the results of C.A.Nos.180-181/84 and various cases pending in different Courts.

(6) Since the Hon'ble Supreme Court of India pronounced the final judgment on 27.2.96 in C.A.Nos.180-181/84 the relaxations given from 27.2.96 to promote unqualified candidates to higher categories shall be deemed to be null and void legally."

In view of the above averments in the counter, the Writ Petition is devoid of merits and is liable to be dismissed.

Accordingly, the Writ Petition is dismissed. No order as to costs.

16-4-2007

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